

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition No.4066 of 2005

Shri Diwakar R Khole ...Petitioner

VS

Smt Satyabhama R Khole and ors... ..Respondents

Mr P B Saligram for petitioner

Mr.R.S.Apte with Mr.Garge for respondent no.2

Mr. Rayrikar for respondent no.8

Mr. Madhav Jamdar for respondent no.11

**CORAM; A.P.SHAH J.**  
Dt 28.9.2005

**P.C.**

. The plaintiff is the petitioner before this court. The plaintiff has filed the suit in question for partition in respect of agricultural lands and house properties. The original defendant nos.1,2 and 6- 8 i.e. respondent nos 1,2 and 6 herein have filed their written statement to the suit.

2. Apart from other defences which were taken in the written statement a specific defence was taken that the suit itself was barred by limitation. According to them defendants on the plaintiff's own showing the suit is hopelessly barred by

limitation.

3. The defendant no. 2 preferred an application Exh 68 for framing an issue of limitation as a preliminary issue and this application was allowed by the trial court by the impugned order dated 10.2.2005. Present petition has been filed against the said order.

4. The learned counsel for the petitioner submitted that the learned trial court should not have framed the issue of limitation as a preliminary issue, especially when the said issue is a mixed question of law and fact. I find merit in the submission of the learned counsel for the petitioner. The Supreme Court has time and again pointed out the undesirability of deciding a suit on a preliminary issue. The Court has also insisted that normally all issues should be decided while disposing of the suit. By the amendment in Order XIV rule 2 of the CPC it is provided that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. Sub-Rule (2) of Rule 2 of Order XIV is an exception where a suit can be disposed of on the question of law only.

5. After hearing the learned counsel for the parties I am of the opinion that the present case was not one of such suits which should have been disposed of on the preliminary issue. While deciding the question whether the suit was barred by limitation, the trial court will have to examine the allegations made in the plaint and the stand taken by the defendants in the written statement. In my view it will not be proper for this court to express any opinion on the plea of limitation . Proper course shall be to direct the trial court to take up the suit for hearing and decide all the issues including the issue of limitation.

6. In the result petition is allowed. The impugned order is quashed and set aside. The trial court is directed to hear the suit on all issues including the issue of limitation and dispose of the same expeditiously and preferably within a period of one year.